

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AYNA AMANDA MEPELINK,

CASE NO. C19-5655RJB

Plaintiff,

ORDER STRIKING MOTIONS AND STAYING CASE

WILMINGTON SAVINGS FUND
SOCIETY FSB, d/b/a CHRISTIANA
TRUST, a trustee for PREMIUM
MORTGAGE CREDIT MANAGEMENT;
SELENE FINANCE LP; and

Defendants.

THIS MATTER comes before the Court on the Defendant and Counterclaimant

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, trustee for Premium Mortgage Trust (“Wilmington”) and Defendant Selene Finance LP’s (“Selene”) (collectively “Defendants”) Motion for Judgment on the Pleadings (Dkt. 97) and Defendants’ Request for Judicial Notice (Dkt. 97-2). The Court has reviewed the pleadings filed regarding the motion and request and the remaining records.

1 Originally filed in Kitsap County, Washington Superior Court, this case arises from a
2 dispute over a mortgage and deed of trust on property commonly known as 11700 Carriage Place
3 SE, Olalla, Washington. Dkt. 1-3. Plaintiff brings this case *pro se*. For the reasons provided
4 below, the Defendants' request for judicial notice (Dkt. 97-2) and motion for a judgment on the
5 pleadings (Dkt. 97) stricken without prejudice and the case stayed.

6 Wilmington's Request for Judicial Notice (Dkt. 49-4) and Motion for Summary
7 Judgment as to Judicial Foreclosure Counterclaim Only (Dkt. 49) was granted on March 10,
8 2020. Dkt. 54. The facts and procedural history are in that March 10, 2020 Order (Dkt. 54, at 1-
9 6) and are adopted here. That Order held that this Court has jurisdiction over the case,
10 Wilmington was the holder of the note and entitled to enforce the note and foreclose on the deed
11 of trust under Washington law, the Plaintiff's loan is in default, Wilmington has accelerated the
12 note, and that Wilmington may proceed to judicial foreclosure. *Id.*

13 Wilmington's motion for entry of partial judgment on its counterclaim for judicial
14 foreclosure, pursuant to Fed. R. Civ. P. 54(b), was granted on July 1, 2020. Dkt. 86. The Final
15 Judgment and Decree of Foreclosure was entered that same day. Dkt. 87. The Plaintiff filed a
16 Notice of Appeal with the Ninth Circuit Court of Appeals on July 27, 2020. Dkt. 93.

17 After the notice of appeal was filed, the Defendants filed the instant request for judicial
18 notice and move for a judgment on the pleadings.

DISCUSSION

20 **Jurisdiction while on Appeal.** In a civil case, a notice of appeal must be filed with the
21 district court within 30 days after the judgment or order appealed from is entered. Fed. R. App.
22 P. 4(a)(1). Once a notice of appeal is filed from a final judgment, the district court is divested of
23 jurisdiction. *Laurino v. Syringa General Hosp.*, 279 F.3d 750, 755 (9th Cir. 2002); *Griggs v.*

1 *Provident Consumer Disc. Co.*, 459 U.S. 56, 58- 59 (1982). However, when a Notice of Appeal
2 is defective in that it refers to a non-appealable interlocutory order, it does not transfer
3 jurisdiction to the appellate court, and so the ordinary rule that the district court cannot act until
4 the mandate has issued on the appeal does not apply. *Nascimento v. Dummer*, 508 F.3d 905, 908
5 (9th Cir. 2007).

6 Partial final judgment has been entered in this case. The Plaintiff's Notice of Appeal
7 appeals the partial final judgment – it does not seek to appeal interlocutory orders. This Court no
8 longer has jurisdiction over the case. The Defendants' request for judicial notice and motion for
9 judgment on the pleadings should be stricken without prejudice, to be renoted, if appropriate,
10 after the appeal is complete.

11 Further, this case should be stayed and all case deadlines should be stricken. Parties
12 should file a joint report informing the Court of the conclusion of the appeal, but in any case, by
13 July 9, 2021.

14 **I. ORDER**

15 **IT IS ORDERED THAT:**

- 16 • Defendant and Counterclaimant Wilmington Savings Fund Society, FSB, d/b/a
17 Christiana Trust, a trustee for Premium Mortgage Acquisition Trust and Defendant
18 Selene Finance's Motion for Judgment on the Pleadings (Dkt. 97) and
19 Defendants' Request for Judicial Notice (Dkt. 97-2) **ARE STRICKEN**
20 **WITHOUT PREJUDICE;**
21 • This case **IS STAYED**;
22 • All pending deadlines **ARE STRICKEN**;

- Parties **SHALL FILE** a joint report informing the Court of the conclusion of the appeal, but in any case, by **July 9, 2021**.

The Clerk is directed to send copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 25th day of September, 2020.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge